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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 11, and 23

[FAC 2001-15; FAR Case 2001-028; Item II]
RIN 9000-AJ47

Federal Acquisition Regulation; Energy-Efficient Standby Power
Devices

AGENCIES: Department of Defense (DoD), General Services Administration
(GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense
Acquisition Regulations Council (Councils) have agreed on a final rule
amending the Federal Acquisition Regulation (FAR) to implement
Executive Order (E.O.) 13221 of July 31, 2001, Energy-Efficient Standby
Power Devices, and to clarify requirements for the purchase of
recovered material.

DATES: Effective Date: August 25, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS
Building, Washington, DC, 20405, (202) 501-4755, for information
pertaining to status or publication schedules. For clarification of
content, contact Ms. Laura Smith, at (202) 501-1224. Please cite FAC
2001-15, FAR case 2001-028.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils have agreed to amend the FAR to--

1. Implement E.O. 13221, by providing guidance on energy-efficient
standby power devices; and
2. Clarify requirements for the purchase of recovered material.

DoD, GSA, and NASA published a proposed rule in the Federal
Register at 67 FR 64010, October 16, 2002. Four respondents submitted
public comments. A discussion of the comments is provided below. The
Councils concluded that the proposed rule should be converted to a
final rule, with only minor editorial changes made to the proposed rule
(see Response'' to comment number 3).

1. Comment: The respondent supported the proposed revisions to the

FAR, as ``they provide the needed clarity in both these areas and will enhance contracting officers' ability to effectively purchase green products.''

Councils' Response: No change.

2. Comment: The proposed FAR 23.203(a)(1)(ii) authorizes the purchase of products that meet a Department of Energy Federal Energy Management Program (FEMP) standby power wattage recommendation. However, the FEMP recommended standby power wattage for about half of the product categories is higher than the one watt limit mandated by the E.O., even though the listing of products for the categories identify numerous products that consume one watt or less in their standby mode.

Councils' Response: Nonconcur. In accordance with Section 1. of E.O. 13221, adherence to the one watt requirement is mandated only ``when life-cycle cost-effective and practicable and where the relevant product's utility and performance are not compromised as a result.''. Pursuant to this direction, FEMP does not recommend restricting procurement within a product category to items that use only one watt or less of electricity when such a restriction would not permit adequate competition among producers.

3. Comment: The definition of energy-efficient standby power devices that was added in FAR 2.101 could apply to all products that use power (e.g., a flashlight), rather than ``commercially available, off-the-shelf products that use external standby power devices, or that contain an internal standby power function'' per Section 1. of the E.O. The respondent recommended revising paragraph 1 of the definition to read: ``(1) Use external standby power devices, or that contain an internal standby power function.''

Councils' Response: Concur. The Councils have revised the definition of energy-efficient standby power devices at FAR 2.101 accordingly.

4. Comment: The proposed rule would amend FAR 11.002, Policy, by adding to paragraphs (d)(1) and (2) a reference to E.O. 13221 and text regarding products containing energy-efficient standby power devices. The amendment, as proposed, could be interpreted as giving preference to products that consume one watt or less while in standby mode over products that consume zero watts when switched off. This, of course, would run contrary to the intent of the E.O. Moreover, many office products rarely enter into a standby power mode and, hence, greater energy can be conserved via a power management function, a feature typical on Energy Star-qualified products.

Councils' Response: Nonconcur. The policy statement does not express a preference for products with energy-efficient standby power devices over products which do not contain a standby power function. Rather, the policy statement indicates that if the Government requires a product that consumes power in a standby mode, the standby power device should be energy-efficient. Whether a product contains a standby power device will, in most instances, be determined by agency needs and related functions required of the product. For product categories covered by Energy Star, FEMP only considers a product for its standby power device list if it also meets the Energy Star criteria which includes power management functions.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and

the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because this rule simply provides additional guidance to Government contracting and technical personnel with respect to the Government's preference, set forth in FAR Subpart 23.2, for buying energy-efficient products and services. This rule requires a contracting officer, when acquiring a product that uses an external standby power device or that

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contains an internal standby power function, to purchase an energy-efficient product (when commercially available, life-cycle cost-effective, and practicable), i.e., a product that uses no more than one watt in its standby power consuming mode. With respect to the change to the recovered material text, this rule only clarifies the condition for when the contracting office shall prepare a written justification.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 2, 11, and 23

Government procurement.

Dated: July 16, 2003.

Laura Auletta,
Director, Acquisition Policy Division.

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Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 11, and 23 as set forth below:

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1. The authority citation for 48 CFR parts 2, 11, and 23 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2--DEFINITIONS OF WORDS AND TERMS

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2. Amend section 2.101, by adding in alphabetical order, the definition, ``Energy-efficient standby power devices'' to read as follows:

2.101 Definitions.

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Energy-efficient standby power devices means products that use--

(1) External standby power devices, or that contain an internal standby power function; and

(2) No more than one watt of electricity in their standby power

consuming mode or meet recommended low standby levels as designated by the Department of Energy Federal Energy Management Program.

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PART 11--DESCRIBING AGENCY NEEDS

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3. Amend section 11.002 by revising paragraph (d)(1) and the introductory text of (d)(2) to read as follows:

11.002 Policy.

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(d)(1) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, et seq.), Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management, and Executive Order 13221 of July 31, 2001, Energy-Efficient Standby Power Devices, establish requirements for acquiring--

(i) Products containing recovered materials;

(ii) Environmentally preferable products and services;

(iii) Energy-efficient products and services;

(iv) Products and services that utilize renewable energy technologies; and

(v) Products containing energy-efficient standby power devices.

(2) Executive agencies shall consider use of recovered materials, energy- and water-efficient products and services, products containing energy-efficient standby power devices, environmentally preferable purchasing criteria developed by the EPA, and environmental objectives (see Subparts 23.2 and 23.4, and 23.703(b)) when--

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4. Amend section 11.101 in the introductory text of paragraph (b) by removing ``must'' and adding ``shall'' in its place; and by revising paragraph (b)(1) to read as follows:

11.101 Order of precedence for requirements documents.

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(b) * * *

(1) Energy efficiency, including using products containing energy-efficient standby power devices and renewable energy technologies; and

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PART 23--ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

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5. Amend section 23.201 by adding paragraph (e) to read as follows:

23.201 Authorities.

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(e) Executive Order 13221 of July 31, 2001, Energy-Efficient Standby Power Devices.

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6. Revise section 23.203 to read as follows:

23.203 Energy-efficient products.

(a) If life-cycle cost-effective and available--

(1) When acquiring energy-using products--

(i) Agencies shall purchase ENERGY STAR[reg] or other energy-efficient items listed on the Department of Energy's Federal Energy Management Program (FEMP) Product Energy Efficiency Recommendations product list; and

(ii) For products that consume power in a standby mode and are listed on FEMP's Standby Power Devices product listing, agencies shall--

(A) Purchase items which meet FEMP's standby power wattage recommendation or document the reason for not purchasing such items; or

(B) If FEMP has listed a product without a corresponding wattage recommendation, purchase items which use no more than one watt in their standby power consuming mode. When it is impracticable to meet the one watt requirement, agencies shall purchase items with the lowest standby wattage practicable; and

(2) When contracting for services that will include the provision of energy-using products, including contracts for design, construction, renovation, or maintenance of a public building, the specifications shall incorporate the applicable requirements in paragraph (a)(1) of this section.

(b) The requirements in paragraph (a) of this section only apply when the relevant product's utility and performance meet the agency's need.

(c) Information is available via the Internet about--

(1) ENERGY STAR[reg] at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from>

(2) FEMP at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.h>

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7. Amend section 23.405 by revising the introductory text of paragraph (c) to read as follows:

23.405 Procedures.

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(c) The contracting officer shall place in the contract file a written justification if an acquisition of EPA-designated products above the micro-purchase threshold does not meet applicable minimum recovered material content recommended by EPA guidelines. If the agency has designated an Environmental Executive, the contracting officer shall give a copy of the written justification to that official. The contracting officer shall base the justification on the inability to acquire the product--

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8. Amend section 23.406 by revising paragraph (a) to read as follows:

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23.406 Solicitation provision and contract clause.

(a) Insert the provision at 52.223-4, Recovered Material

Certification, in solicitations that are for, or specify the use of,
EPA-designated products containing recovered materials.

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[FR Doc. 03-18534 Filed 7-23-03; 8:45 am]